

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
ADDENDUM TO THE FINAL STATEMENT OF REASONS FOR REGULATORY
ACTION

Add Sections 52.00, 52.01, 52.02, 52.03, 52.04,
52.05, and 52.09, and Amend Sections 150.16, and 150.17,
Title 14, California Code of Regulations (CCR).

Re: Nearshore Fishery Management Plan
Implementing Regulations, and
Commercial Take of Nearshore Fishes,
Commercial Nearshore Fishing Gear.

VI. Update

Identification of Reports or Documents Supporting Regulation Change:

In the section of the Amended Initial Statement of Reasons under 'Identification of Reports or Documents Supporting Regulation Change' the Department identified a document National Marine Fisheries Service, 2000, Marine Recreational Fisheries Statistics Survey (MRFSS). Pacific Coast, and a web site www.st.nmfss.gov/st1/recreational/survey/index.html that contains information derived from the Marine Recreational Fisheries Statistics Survey, Pacific Coast, for the past two decades. This document was formerly published in a hard copy format during the 1980s but has not been published in hard copy since about 1990. The MRFSS is an important source of recreational fisheries data collected through a comprehensive annual survey of sport fishing participants. The MRFSS data is summarized annually into tables that include sample data and estimates of total annual recreational fishing catch and effort. This data is utilized in almost every fishery assessment that involves aspects of recreational fishing off California, Oregon, and Washington, and was utilized at various times by the Department during examination of nearshore fishery information primarily when preparing information for the Nearshore FMP and, to a lesser extent, during drafting of the rulemaking documents (impacts of the regulations). No specific document was relied upon or identified in the citation in the Amended Initial Statement of Reasons, and consequently this citation should probably not have been included. Currently, the correct web site address for the MRFSS report is www.st.nmfss.gov/st1/recreational/data.html. This web site is normally available to both the public and staff of the state and Federal fishery management agencies. However, the Pacific States Marine Fisheries Commission (PSMFC) staff that administer the MRFSS and compile the MRFSS tables, have informed us that the web site is currently inaccessible, and have informed the National Marine Fisheries Service web master for that site of this condition. We do not know at what point during development of the Nearshore FMP and rulemaking process that this web site became inoperable, but it was probably quite recent given the frequent accessing of this information by fisheries managers and the public.

Addition of Section 52.05: Allocation, Factors the Commission will Consider.

Under current federal and state laws, nearshore species of fish (of which 17 of 19 species are groundfish under federal fisheries management authority) must be managed at sustainable levels. To help achieve this goal, the Pacific Fishery Management Council (Council) and California Fish and Game Commission (Commission) set total annual catches (TACs) and allocate TACs to sport and commercial fisheries, for 14 species of nearshore rockfish and California scorpionfish (Council), and cabezon, two species of greenlings, and California sheephead (Commission). Consequently, the Commission does not yet have authority to set TACs or to allocate most nearshore fishes. Therefore the regulations adopted to implement the Nearshore Fishery Management Plan (NFMP) with respect to TACs and allocations need to specify that the setting of these values will be consistent with regulations of the Department of Commerce until there is a transfer of management authority from the Council to the State. This is achieved through the provision of proposed subsection 52.05(a).

Allocation is of great interest to nearshore fishery participants who wish to see allocations, and changes to allocations, made fairly and equitably. The Department, Commission, and public participants involved in development of the NFMP approach to dealing with allocations recognized the difficulty in setting an overall consistent policy on allocation. Therefore, they identified and supported the adoption of a diverse range of factors for consideration by the Commission when adopting changes in allocations. These factors also are important for the fact that they provide flexibility and options for addressing allocation on a regional basis which is a fundamental part of the nearshore fisheries management approach under the NFMP. Therefore, the regulations of subsection 52.05(b) are needed to incorporate the range of factors sought by the public and others to achieve fair and equitable changes in allocation while assuring the needed flexibility to deal with regional conditions and circumstances in the nearshore fisheries.

There is currently relatively little detailed biological and fisheries information about nearshore fish stocks and fisheries from which to conduct detailed stock assessments to more accurately set TACs and allocations of TACs. Those who drafted the Marine Life Management Act of 1998 (MLMA) which directs the preparation of the Nearshore Fishery Management Plan recognized the data-poor situation associated with California's nearshore fish stocks and fisheries. The Legislature also recognized the potential for overharvest of nearshore fish stocks and overcapitalization of nearshore fisheries if fisheries management action were delayed while seeking more comprehensive biological and fisheries information from which to make management decisions. Consequently, the Legislature directed that management actions be taken quickly utilizing the best available data using a precautionary approach (set harvests conservatively in the absence of more comprehensive and precise data) rather than waiting and risking depletion of nearshore fisheries resources.

The best currently available data to set TACs and allocate nearshore fishes, the data that has been used for the past several years by both the Council and the Commission, are historic fisheries information. With additional effort this data can also be utilized to manage on a regional basis as called for in the NFMP. This data is expected to be the best available information for setting TACs and allocations during the next several years, until more comprehensive stock assessments can be conducted, and so is identified in the regulations as the data that will be used to set TACs and allocations. Therefore, subsection 50.05(c) is needed to comply with the MLMA in conducting timely management of nearshore fish stocks and fisheries.

In seeking to meet the legislative intent to manage with the best available information the Commission has set annual harvests and allocations of nearshore species (cabezon, kelp and rock greenlings, and California sheephead) utilizing catches for years 1983-89 and 1993-99. These are two periods for which uninterrupted data series exist and are two time periods when first the recreational fishery utilized most of the nearshore resource (1983-89), followed by a period when the commercial fishery developed to utilize an increasing proportion of the nearshore resources (1993-99). Until regional management is phased in and historic fishery information is adapted for use on a regional basis, which is being pursued now, subsection 52.05(d) is needed to comply with the MLMA directive to manage with the best available data in the short term.

Addition of Section 52.09: Take of Nearshore Rockfish, Fishery Closure.

Total allowable catches (TACs) are assigned annually for nearshore fish stocks, with the TACs for most species of nearshore fishes set by the Pacific Fishery Management Council (Council) in the Federal Register. The regulatory language of Section 52.09(a) is needed to avoid the state from preempting federal regulations that specify TACs in 50CFR part 660 until there is a transfer of fishery management authority from the Council to the state. Also, acknowledging current federal authority in regulation informs the Council that California's NFMP is being implemented through regulations in a formal APA process that will aid in a more effective transfer of fishery management control to the Commission without resulting in unregulated fishing that would be in conflict with federal law and the Marine Life Management Act (MLMA).

Closing of a fishery when a TAC is reached is needed to meet the mandates of federal law and the MLMA governing sustainable management of nearshore fish stocks and fisheries. Regulations [subsection 52.09(b)] authorizing the Department to close the nearshore fishery for a species or a species group in a timely manner when a TAC is reached is needed to prevent additional fishing on the stock. If fishing were allowed to continue during the time normally needed to adopt a change in regulation, additional catches may result that jeopardize sustainable management of the stock contrary to the policies of the MLMA. Also, catches made after a TAC is exceeded may be subtracted from the TAC for a following season, which further jeopardize the fishery.

Specifying the process and timing of notification and closure of a fishery [subsections 52.09(c) and (d)] is needed to give fishery participants reasonable notice of the order and an opportunity to comply with fishery closures. This serves to provide an opportunity to adequately publicize and communicate the closure order which, in turn, helps avoid unintentional violations and unnecessary issuance of citations, saving enforcement officers and the courts time and resources. Fishery participants often complain that they are not notified of a change in the law or regulation, which may include a fishery closure. So the proposed regulations should help insure that recreational and commercial fishermen have adequate notice of a nearshore fishery closure when a TAC is exceeded.